

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MASSACHUSETTS

JUDITH THIBEAU
and GEORGE THIBEAU,
Plaintiffs,

C.A. No. 04-10643 MLW

v.

UNITED STATES OF AMERICA
and EAST BOSTON NEIGHBORHOOD
HEALTH CENTER CORPORATION
Defendants.

**PLAINTIFFS' ASSENTED TO MOTION TO FILE SECOND AMENDED
COMPLAINT**

Pursuant to Rule 15 (a) of the Federal Rules of Civil Procedure, plaintiffs hereby move this court to allow them to file a second amended complaint. A copy of that second amended complaint is attached hereto, as Exhibit "A." As grounds for this motion plaintiffs state the following:

1. Plaintiffs filed their original complaint in Federal Court on April 2, 2004. Shortly thereafter plaintiffs' counsel realized that he had stated the wrong date for the date of injury that was stated in the original complaint. Exhibit "B," Affidavit of James Frederick. [The original complaint said that the injury occurred on September 29, 2002; when the injury actually occurred three days earlier, on September 26, 2002. *Id.*] As a result of realizing the error in the plaintiff's original complaint, plaintiffs' counsel immediately filed plaintiffs' first amended complaint on or about April 9, 2004. *Id.* Plaintiffs' first amended complaint was identical to the original complaint, except that the date of September 26, 2002 was substituted at every point where September 29, 2002 was stated in the original complaint. *Id.*
2. Plaintiffs also filed a separate complaint in Massachusetts Superior Court alleging that plaintiff Judith ThibEAU's accident of September 26, 2002 was also proximately caused by the negligence of East Boston Neighborhood Health Center Corporation [hereinafter referred to as EBNHCC]. *Id.* Before answering that complaint defendant EBNHCC removed the case to Federal Court, where it has been assigned Docket Number 04 CV 1095 MLW. *Id.*
3. As of the date of this motion the defendant in the instant case has filed an answer; but defendant EBNHCC has not yet filed an answer to plaintiffs' complaint.

4. Plaintiffs have also filed a motion to join defendant EBNHCC in the instant case and to consolidate both cases. Id.

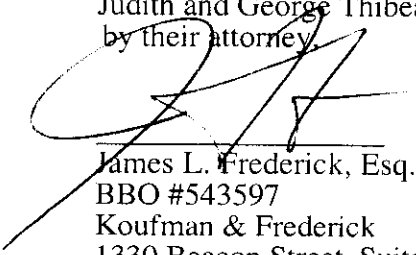
5. In plaintiffs' state and federal complaints plaintiffs have made allegations about the medical care that Judith Thibeau received and allegations about the defendant's maintenance of the premises where Judith Thibeau fell and injured herself.

6. Plaintiffs seek to file this second amended complaint so as to specify that their allegations against EBNHCC are based on premises liability (i.e. breach of the duty of care for the premises where the accident occurred) rather than professional liability (i.e. breach of duty of care by employees of the Vision Center who examined and treated plaintiff Judith Thibeau).

7. Rule 15 (a) of the Federal Rules of Civil Procedure specifically states that leave to amend a pleading "... shall be freely given when justice so requires."

8. Considering all of the above, and: a) the fact that the defendant EBNHCC has yet to file an answer in the case that was removed to Federal Court; b) the fact that plaintiffs' first amended complaint was a relatively minor amendment and was almost identical to the plaintiffs' original complaint; c) the fact that the proposed amendment will not prejudice any party; and d) the fact that Rule 15 (a) states that leave of court to permit amendment of a pleading shall be "freely given [by the court] when justice so requires", this court should allow plaintiffs' motion to file a second amended complaint in this cause of action.

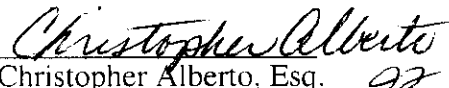
Plaintiffs,
Judith and George Thibeau,
by their attorney,




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Assented To:

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Defendant, East Boston Neighborhood Health Center Corporation
by its attorney

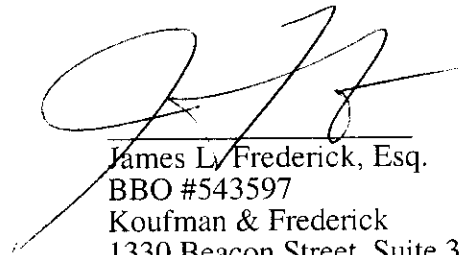

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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the above document was served upon the attorney of record for each other party by first class mail on July 19, 2004.

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